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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

JUL 25 1994

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| In the Matter of |) | FEDERAL COMMUNICATIONS COMMISSION |
| |) | OFFICE OF THE SECRETARY |
| 1994 Annual Access |) | CC Docket No. 94-65 |
| Tariff Filings |) | |
| |) | |

PETITION FOR CLARIFICATION OR RECONSIDERATION
OF SOUTHWESTERN BELL TELEPHONE COMPANY

Southwestern Bell Telephone Company (SWBT), pursuant to Section 1.429 of the rules of the Federal Communications Commission (Commission),¹ hereby requests that the Commission clarify or reconsider two limited aspects of its Memorandum Opinion and Order Suspending Rates released June 24, 1994.² The 1994 Annual Access Tariff Filing Order allowed all of SWBT's 1994 filing to take effect as scheduled, with some portions subject to further investigation. Nevertheless, two aspects of that order require clarification or reconsideration. In particular, the Commission should clarify or reconsider that part of its 1994 Annual Access Tariff Filing Order that implies that local exchange carriers (LECs) subject to price cap regulation that wish to treat the new regulatory fees as exogenous costs should petition for a waiver of the Commission's rules. Further, the Commission should clarify that SWBT's proposed \$6.04 fixed mileage charge for DS-1 services

¹ 47 C.F.R. Section 1.429.

² 1994 Annual Access Tariff Filings, National Exchange Carrier Association Universal Service Fund and Lifeline Assistance Rates, CC Docket No. 94-65 Transmittal No. 612, Memorandum Opinion and Order Suspending Rates (DA 94-706) (Com. Car. Bur., released June 24, 1994) (1994 Annual Access Tariff Filing Order).

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with zero miles of interoffice transport is not subject to the expanded interconnection investigation.

I. THE COMMISSION'S RULES DO NOT REQUIRE PETITIONS FOR WAIVER TO BE FILED FOR THOSE EXOGENOUS COST CHANGES THAT QUALIFY UNDER SECTION 61.45(d)(1)(vi).

The 1994 Annual Access Tariff Filing Order denied the arguments by Bell Atlantic and NYNEX to allow treatment of the Commission's new regulatory fees³ as exogenous costs.⁴ As the primary support for this reading of the rules, it cites to the 1994 Fees Order at footnote 38.⁵

As shown by the attached Petition for Clarification or Reconsideration of Southwestern Bell Telephone Company of the 1994 Fees Order, SWBT has not always been required to file petitions for waiver to allow for exogenous cost treatment of items included

³ Implementation of Section 9 of the Communications Act, Assessment and Collection of Regulatory Fees for the 1994 Fiscal Year, Notice of Proposed Rulemaking, MD Docket No. 94-19, FCC 94-46, 59 Fed. Reg. 12,570 (rel. Mar 11, 1994) (1994 Fees Notice); Report and Order, FCC 94-140, MD Docket No. 94-19, 59 Fed. Reg. 30,984 (released June 8, 1994) (1994 Fees Order).

⁴ 1994 Annual Access Tariff Filing Order, para. 64. Rochester Telephone Corporation, Vista Telephone Company of Minnesota and Vista Telephone Company of Iowa also requested exogenous treatment of these fees in their filings. These requests were denied in a separate order. 1994 Annual Access Tariff Filings, Nevada Bell, Pacific Bell, Rochester Telephone Corporation, Vista Telephone Companies, CC Docket No. 94-65, Transmittal No. 196, Transmittal No. 1701, Transmittal No. 222, Transmittal No. 30, Memorandum Opinion and Order Suspending Rates (DA 94-707) (Com. Car. Bur. released June 24, 1994), para. 45.

⁵ The order also cites to Petition for Waiver of the Commission's Rules to Recover Network Depreciation Costs, 9 FCC Rcd 377 (1993), but this decision provides no support for the Bureau's denial of exogenous treatment here. The Commission's decision was a denial of a petition for waiver for exogenous treatment where the LEC chose to use that procedure to raise the question. The Commission's decision provides no discussion of whether the petition for waiver was the required method to raise the question.

under Section 61.45(d)(1)(vi). Therefore, Bell Atlantic's request for exogenous cost treatment of the new regulatory fees should have been considered in the 1994 Annual Access Tariff filing proceeding, absent a rule change that would require a petition for waiver to be filed.⁶

II. SWBT'S FIXED MILEAGE CHARGE FOR DS-1 SERVICES WITH ZERO MILES OF INTEROFFICE TRANSPORT NEED NOT BE INVESTIGATED.

The 1994 Annual Access Tariff Filing Order stated that it suspended the \$6.04 rate element in SWBT's Transmittals Nos. 2344 and 2364 for one day, and incorporated it into the investigation in the ongoing expanded interconnection proceedings.⁷ Notwithstanding this conclusion, the 1994 Annual Access Tariff Filing Order also determined that SWBT's charge was below the applicable price cap indices and within the service bands. The 1994 Annual Access Tariff Filing Order also stated that SWBT had sufficiently addressed MFS' concerns regarding the \$6.04 charge. Since the 1994 Annual Access Tariff Filing Order found SWBT's proposed rate to be within the price cap rules, and since SWBT's compliance with those rules precludes any double recovery, SWBT wishes to have the Commission clarify that the proposed \$6.04 charge for the DS1 zero-

⁶ The Commission is required to apply its rules regarding exogenous treatment as written and not to "concoct" new rules without appropriate proceedings. Southwestern Bell Telephone Company, et. al. v. F.C.C., Case No. 93-1168, (D.C. Cir. July 12, 1994) slip. op., 15.

⁷ See Local Exchange Carriers' Rates, Terms and Conditions for Expanded Interconnection for Special Access, CC Docket No. 93-162, 8 FCC Rcd 4589 (Com. Car. Bur. 1993) (Suspension Order); Local Exchange Carriers' Rates, Terms and Conditions for Expanded Interconnection for Special Access, CC Docket No. 93-162, 8 FCC Rcd 6909 (Com. Car. Bur. 1993) (Designation Order).

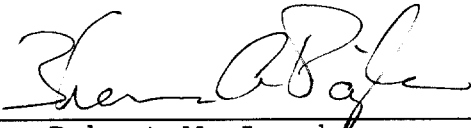
mileage rate element should be allowed to take effect without being subject to the expanded interconnection investigation.

III. CONCLUSION

For the foregoing reasons, SWBT respectfully asks that the Commission clarify, or in the alternative, reconsider, the two aspects of its 1994 Annual Access Tariff Filing Order discussed above, as requested.

Respectfully submitted,

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July 25, 1994

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

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|-------------------------------------|---|---------------------|
| In the Matter of |) | |
| |) | |
| |) | |
| Implementation of Section IX of the |) | |
| Communications Act |) | MD Docket No. 94-19 |
| |) | |
| Assessment and Collection of |) | |
| Regulatory Fees for the |) | |
| 1994 Fiscal Year |) | |
| |) | |

**PETITION FOR CLARIFICATION OR RECONSIDERATION OF
SOUTHWESTERN BELL TELEPHONE COMPANY**

Southwestern Bell Telephone Company (SWBT), pursuant to Section 1.429¹ of the rules of the Federal Communications Commission (Commission), hereby requests that the Commission clarify or reconsider that part of its Report and Order² which asserts that local exchange carriers (LECs) subject to price cap regulation that wish to treat the new regulatory fees as exogenous costs should petition for a waiver of the Commission's rules.³

A number of price cap LECs filed comments in this proceeding, claiming that the new regulatory fee payments should qualify for exogenous treatment. In a footnote, the Report and Order holds that this request is beyond the scope of this proceeding. The Report and Order, however, goes further to state that "LECs seeking to charge their regulatory fees directly to

¹ 47 C.F.R. Section 1.429.

² Implementation of Section IX of the Communications Act, Assessment and Collection of Regulatory Fees for the 1994 Fiscal Year, MD Docket No. 94-19, Report and Order, (FCC 94-140) (released June 8, 1994) (Report and Order).

³ Report and Order, fn. 38.

subscribers should petition for a waiver of the Commission's rules."⁴

To the extent that this language can be read to require that price cap LECs that seek to charge their regulatory fees to subscribers (by way of a request for exogenous cost increase in their price cap indexes) must petition for a waiver of the Commission's rules to do so, it must be clarified or reconsidered. The current rules do not require any such petition to be filed, and it is improper to impose such a requirement without a new rulemaking.

A provision already exists within the price cap rules under which exogenous treatment of this type of cost can be requested. Part 61.45(d) specifies that exogenous cost changes "shall be limited to those cost changes that the Commission shall permit or require." Part 61.45(d)(1) lists a number of cost changes that are considered exogenous. Subsection (vi) refers to "such tax law changes and other extraordinary exogenous cost changes as the Commission shall permit or require." This subsection permits exogenous cost requests for taxes and fees such as the newly created regulatory fees.

For example, on September 1, 1993, SWBT filed Transmittal No. 2295, without a waiver request, to ask for exogenous treatment of Telecommunications Relay Service (TRS) fund payments prior to the Commission's Order in CC Docket No. 90-571, released September 29, 1993 that approved exogenous cost treatment of these payments. Although Transmittal No. 2295 was deferred to November 30, 1993 at

⁴ Report and Order, fn. 38.

the Staff's direction (the filing actually became effective on October 16, 1993), a waiver of Section 61.45(d) was not required to request exogenous treatment of this extraordinary cost.

Since the existing rules are sufficient to allow a request for exogenous cost treatment to be filed for the new regulatory fees through the tariff review process, no waiver of the rules is required. In the tariff review process, the Commission may investigate the basis for any claim of exogenous cost treatment if there are sufficient grounds to do so. A separate proceeding, to rule on a petition for waiver, is unnecessary and will squander the Commission's resources.

CONCLUSION

For the foregoing reasons, SWBT respectfully requests that the Commission clarify or reconsider that portion of the Report and Order that appears to impose a new requirement that petitions for waiver are necessary to obtain exogenous treatment for new extraordinary costs that otherwise fit within the Commission's rules for exogenous treatment.

Respectfully submitted,

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July 18, 1994

CERTIFICATE OF SERVICE

I, Joseph Meier, hereby certify that the foregoing
"Petition for Clarification or Reconsideration of Southwestern Bell
Telephone Company", In CC Docket No. 94-65, has been served
this 25th day of July, 1994, to the Parties of Record.


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